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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

JARED EDWARD BEEBE,

Plaintiff,

vs.

ELKO COUNTY JAIL; JIM PITTS; *et al.*,

Defendants.

Case No.: 3:16-cv-00595-MMD-VPC

**MOTION FOR LEAVE TO DEPOSE
INCARCERATED PLAINTIFF**

COMES NOW, Defendant JIM PITTS, by and through his Attorneys of Record,
ERICKSON, THORPE & SWAINSTON, LTD., and BRENT L. RYMAN, ESQ., and hereby
moves this Court to allow, as per NRS 50.215 and FRCP Rule 30(a)(2)(B), the deposition
of a person imprisoned in a state prison of Nevada, in this case Plaintiff JARED EDWARD
BEEBE, prior to the discovery cutoff of February 26, 2018. (Order (#9), p. 2, ll. 4-5).

Defendant's Motion is made and based upon NRS 50.215, FRCP Rule 30, all of the
pleadings and papers on file herein, as well as the following Memorandum of Points &
Authorities.

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MEMORANDUM OF POINTS & AUTHORITIES

I. SUMMARY OF ACTION AND CURRENT MOTION

As the Court is aware, Plaintiff in this matter is currently imprisoned in the Warm Springs Correctional Center in Carson City, Nevada. Defendant PITTS wishes to take Plaintiff's deposition in this matter and, therefore, respectfully move this Court for an Order directing prison officials to allow the same as outlined in greater detail below.

II. LEGAL ARGUMENT

A. The Federal Rules and Nevada law provide that an imprisoned person may give deposition testimony for use in a civil action when such examination is allowed by the Court.

As referenced above FRCP Rule 30(a)(2)(B) requires leave of this Court before Defendant may depose a person confined in prison. Nevada also provides a relevant statute on the subject. In this regard, NRS 50.215, entitled "Examination of Prisoner as Witnesses; Notification of Department of Corrections Required," reads, *in toto*, as follows:

1. A person imprisoned in the state prison or in a county jail may be examined as a witness in the district court pursuant to this section. The examination may only be made on motion of a party upon affidavit showing the nature of the action or proceeding, the testimony expected from the witness, and its materiality.
2. In a civil action, if the witness is imprisoned in the county where the action or proceeding is pending, his production may be required by the court or judge. In all other cases, his examination, when allowed, must be taken upon deposition.
3. In a criminal action, an order for that purpose may be made by the district court or district judge, at chambers, and executed by the sheriff of the county where the action is pending. Except as otherwise provided by NRS 209.274, the judge may order the sheriff to bring the prisoner before the court as the expense of the state or at the expense of the defendant.
4. If a person imprisoned in the state prison is required or requested to appear as a witness in any action, the department of corrections must be notified in writing:
 - (a) Not less than 7 business days before the date scheduled for his appearance in court if the offender is incarcerated:

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- (1) In a prison located not more than 65 miles from Carson City;
 - (2) In a prison located not more than 40 miles from Las Vegas; or
 - (3) In a prison located not more than 95 miles from Ely.
- (b) Not less than 14 business days before the date scheduled for his appearance in court if the offender is incarcerated in a prison which is located at a distance which exceeds those specified in paragraph (a).

NRS 50.215 (2017).

Because he is the Plaintiff in this matter, Mr. Beebe's testimony will be important Defendant's anticipated dispositive motion. Therefore, Defendants would respectfully request an Order from this Court directing the appropriate state corrections personnel to allow Defendants to take Plaintiff's deposition, to be recorded via stenographic means, at the Warm Springs Correctional Center. The undersigned counsel will make arrangements for the deposition once leave is granted by this Court.

III. CONCLUSION

NRS 50.215 provides for the examination of an inmate incarcerated within the Nevada State Prison System, in this case Plaintiff, and FRCP Rule 30(a)(2)(B) requires leave of this Court. Defendant therefore respectfully petitions this Court to allow counsel to proceed with the deposition of the inmate Jared Beebe at Warm Springs Correctional Center on a date convenient to the parties and acceptable to prison officials.

DATED this 18th day of January, 2018.

ERICKSON, THORPE & SWAINSTON, LTD.

IT IS SO ORDERED

U.S. MAGISTRATE JUDGE

DATED: January 22, 2018

/s/ Brent Ryman

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CERTIFICATE OF SERVICE

Pursuant to NRCP Rule 5, I certify that I am an employee of ERICKSON, THORPE & SWAINSTON, LTD. and that on this day I caused to be served a true and correct copy of the attached document by:

X U.S. Mail
G Facsimile Transmission
G Personal Service
G Messenger Service
G CMECF

addressed to the following:

Jared Beebe #86736
Warm Springs Correctional Center
P.O. Box 7007
Carson City, Nevada 89702
Plaintiff, in pro per

DATED this 18th day of January, 2018.

/s/ Brent Ryman
Brent Ryman